CHARTERED BANK (MALAYA) TRUSTEE LTD. v. ABU BAKAR

[C. A. (Mathew C.J. (F.M.), Knight and Whitton JJ.) November 27, 1956]

[Singapore — Civil Appeal No. 14 of 1956]

Landlord and Tenant — Tenancy held by partners as joint tenants — Change of partners — Notice to quit — Whether statutory tenancy created — Control of Rent Ordinance (Cap. 242).

The premises in this case were let on a monthly tenancy to the firm of Mohamed Saiboo & Co., which consisted of two partners, Mohamed Salih and Abdul Majid. There were subsequent changes in the partnership and at the time the writ in this case was issued the two partners were Abdul Majid and Abu Bakar, the respondent-defendant. Notice to quit was served on Mohamed Salih and Abdul Majid requiring them to deliver up possession on February 28, 1955 and a few days later the writ was issued against the defendant. The learned trial Judge held that subsequent to the defendant's holding over after the notice to quit, he must be deemed to be the licensee or agent of Abdul Majid and gave judgment for the defendant. The plaintiffs appealed.

Held (by Knight and Whitton, JJ., Mathew C.J. (F.M.) dissenting): in the circumstances of the cases the defendant could not be said to have held over as Abdul Majid's licensee or agent.

Per Knight J.: no partner, agent or licensee can hold over in Singapore for an absent partner in business premises, and thus acquire for him a statutory tenancy.

Per Whitton J.: a man who claims rights of tenancy through one who has by any ordinary criterion abandoned his tenancy must establish positively that he himself holds or retains authority from the departed tenant which legally entitles him to retain possession.

Cases referred to:—

(1) *Brown v. Draper* (1944) K.B. 309.

(2) *Hardial Singh & Ors. v. Malayan Theatres Ltd.* (1953) M.L.J. 180.

(3) *Old Gate Estates Ltd. v. Alexander* (1950) 1 K.B. 319.

(4) *Wray v. Wray* (1905) 2 Ch. 349.

(5) *In re Smith* (1914) 1 Ch. 948.

COURT OF APPEAL.

J. E. Lloyd for the appellants (plaintiff).

A. P. Rajah for the respondent (defendant).

Mathew C.J. (F.M.) : — The premises, the subject matter of this case, were let on a monthly tenancy to the firm of Mohamed Saiboo & Co., which consisted of two partners Mohamed Salih and Abdul Majid. It was in law a lease to the two partners as joint tenants. Various changes in the partnership took place and at the time the writ was issued the two partners were Abdul Majid and Abu Bakar, the respondent/defendant.

In July, 1954, the appellants wrote to the firm of Mohamed Saiboo & Co., saying that they had heard that the firm was closing down. The reply was that this was untrue and in the reply it was disclosed that the existing partners were Abdul Majid and Abu Bakar. Thereafter rent continued to be paid and accepted but in November the firm asked that receipts should be issued in the names of the existing and not the old partners. Two months later a notice to quit was served on Mohamed Salih and Abdul Majid requiring them to deliver up possession on 28th February, 1955. A few days later the writ was issued. In the Statement of Claim a declaration was prayed that "the defendant by his servants or agents or otherwise is not entitled to possession of the premises No. 104 North Bridge Road, Singapore." It seems clear that the purpose of the appellants was to secure possession of the premises and I find it difficult to understand why the appellants asked for the exercise of a discretionary power of the Court instead of asking for the proper remedy – possession against the tenants. To succeed in their action the appellants had to destroy the existing tenancy and that in my view they have failed to do. Whether Abdul Majid has "absconded" to India or not, and whether he personally or the partnership owes large sums of money seems to me to be irrelevant to the decision of this case. The partnership continues and Abdul Majid one of the joint tenants of the premises is in occupation of the premises for the purpose of the partnership business.

The appellants have argued that the judgment of the learned Chief Justice amounts to an extension of the principle laid down in *Brown v. Draper*[1]. This in my view is based on a misunderstanding of the judgment. The learned Chief Justice was emphasizing the point that a landlord is no more entitled to treat his tenant's licensee as a trespasser than he is to treat the tenant himself as a trespasser.

If a tenant is to have an order for possession made against him he must be before the Court. It is quite clear to me that the respondent, the co-partner of Abdul Majid was on the premises for the purpose of carrying on the business of Mohamed Saiboo & Co., and was the licensee of the tenant. It is in my view impossible to argue that the physical presence of the tenant in business premises is necessary to constitute possession. So long as the business was continued in the premises and office furniture etc., the property of the tenant was on the premises he is for the purposes of the Ordinance in possession.

Abdul Majid is the statutory tenant of the premises in question. Whether the appellants could have established the necessary facts to enable the Court to make an order for recovery of possession had these proceedings been taken against Abdul Majid is a matter of academic interest only.

In my view the proceedings on the pleadings were misconceived and nobody can be blamed for the confusion that occurred but the appellants. The learned Chief Justice was bound to decide the case on the basis that the premises were covered by the Control of Rent Ordinance and in my view he was correct in dismissing the action with costs. The proper defendant was never before the Court. I would dismiss the appeal with costs.

Knight J. : — In this appeal the appellants seek to set aside the judgment of the Court below in which they were refused a declaration that the respondent was not entitled to possession of a certain business premises, known as 104 North Bridge Road, and also an injunction restraining him from remaining on the premises. The facts are very fully set out in the judgment and it is unnecessary to repeat them here but in brief, the learned Chief Justice found that the defendant, acting as agent of one Abdul Majid, the statutory tenant (who is now in India), was lawfully occupying the premises in order to carry on his business in co-partnership with Abdul Majid. He thus refused the reliefs claimed.

It is unnecessary for me to trace the history of the partnership save to say that in April 1950 the defendant replaced one of the then partners and ever since that date he and Abdul Majid have been the only partners of the firm known as A. Mohamed M. Saiboo & Co., doing business in the plaintiffs' premises. Although the pleadings left much to be desired and the Control of Rent Ordinance had not been pleaded by either party, the learned Chief Justice rightly took its provisions into consideration (as the premises are subject to Rent Control) and held that subsequent to the defendant's holding over after notice to quit in February 1955, he must be deemed to be Abdul Majid's licensee, or agent, and Abdul Majid thus became the statutory tenant. The learned Chief Justice based this conclusion on *Brown v. Draper*[1] — it being admitted that Abdul Majid, since June 1954, had been absent from this Colony but had left certain furniture, stock-in-trade and other assets in the premises.

In the first place it is difficult to know exactly what weight should be given to *Brown v. Draper*[1] and other English cases cited by counsel as the Control of Rent Ordinance (Cap. 242) in this Colony is not restricted to dwelling houses as are the English Acts. Lord Porter indeed said in *Hardial Singh & Ors. v. Malayan Theatres Ltd.*[2] (at p. 181):—

> "The provisions of the English Acts throughout their existence have been limited to cases where either the rent or ratable value is less than a specified quantum, and also are confined to dwelling houses as opposed to business premises. The relevant Ordinance, on the other hand, contains no limitation of value and extends its protection to all premises, whether used for business or as dwelling houses. Their Lordships may therefore at once state that they get very little assistance from cases which have been decided upon the terms of the English Acts, since in their view principles applicable to the retention by tenants of places which are required as a home have very little bearing on the position of a tenant who requires a place in which to conduct his business".

It must thus be appreciated that English cases have "very little bearing" and having ascertained the relevant facts it is to decisions of the Courts of this Colony that one must look for guidance on the law. These, unhappily, are very few.

Now it is not disputed in these proceedings that Abdul Majid went to India in June 1954 and that at that time the partnership debts amounted to $117,000 and its assets to approximately $63,000. In November 1954 the defendant wrote to the plaintiffs saying that Abdul Majid had "absconded" and in giving evidence in the Court below he stated that at the present time Abdul Majid still owes nearly $40,000 mainly to the partnership but also to other creditors. He added that he had no idea when Abdul Majid was going to return nor had he ever written to ask him. Since Abdul Majid's somewhat hasty departure, the defendant has paid off the old trade debts owing by the partnership with money which he himself provided. Put, thus, in simple language, Abdul Majid absconded in 1954 owing large sums of money; he has never said that he is returning to this Colony and the defendant has never asked him to do so knowing presumably, how unlikely he is to comply; he still owes a substantial sum and the only interest he appears to have shown in the partnership since he left is a letter which he wrote to the defendant in May 1956 asking for an account. By this date, of course, it is not unreasonable to assume that he was aware of the defendant's attempt to remain on the premises through his (Abdul Majid's) alleged statutory tenancy and thus hoped for some, though, no doubt, remote benefit.

Can it be said in these circumstances that when the defendant held over in 1955 he did so as Abdul Majid's licensee or agent? I do not think it can. At that date the defendant knew Abdul Majid had fled the country, heavily in debt and in November 1954 he asked the plaintiffs to "amend the partner of the above firm to that of Hon'ble Mr. A. M. Abu Bakar". Admittedly the English is ungrammatical but with the knowledge he then had, surely it can only mean that he was asking the plaintiffs to issue the rent receipts in his name as the only remaining partner — a request which although unfortunately at variance with his present claim that he is entitled to possession as Abdul Majid's agent, was only too understandable at that time. I can see nothing in this request to suggest that the defendant ever considered himself for one moment as

Abdul Majid's agent and his only purpose in making it was to endeavour to get the tenancy himself to the exclusion of his partner who had defaulted.

It has been argued that no matter what he thought then, or now, he is still in fact Abdul Majid's partner and despite his intention, held over as his partner's agent. This might I think carry more weight if Abdul Majid were the sole proprietor of the concern, entitled to all profits and responsible for all losses, or if Abdul Majid had authorised the defendant to hold over on his behalf. But neither of these considerations arise here. The defendant has financed the business since his partner departed and for every dollar which the defendant may have set aside from the profits to decrease Abdul Majid's debt it is certain that he has also set one aside for himself. Far from being able to maintain that the business is that of Abdul Majid, to all intents and purposes the defendant is the sole proprietor, subject only to the remote possibility that at some future date he may have to account to Abdul Majid. If, moreover, the former's figures are correct and a profit of $7,000 was made in 1955, and if this represents a normal year's trading profit, at least ten more years must elapse before Abdul Majid can even hope to receive a share of the proceeds of the business. In short the defendant is, and has been, carrying on the business of the firm since Abdul Majid went to India — not the business of the statutory tenant, and nowhere is there any suggestion that Abdul Majid authorised him to hold over on his behalf.

For these reasons I do not think that the defendant can be deemed to have held over as Abdul Majid's agent; but if this is wrong it is also immaterial, as quite apart from the particular circumstances of this case I am of opinion that no partner, agent or licensee can hold over in Singapore for an absent partner in business premises, and thus acquire for him a statutory tenancy.

The position of a statutory tenant is, of course, quite unknown to the common law and has been introduced to the law of this Colony mainly to protect the occupier of premises. Normally there should be residence to claim protection but *Brown v. Draper*[1] establishes that non-residence does not determine the statutory tenancy of a husband if his wife and his furniture remain in the premises because, as Denning L.J. said in *Old Gate Estates Ltd. v. Alexander*[3] the wife "has a very special position in the matrimonial home. She is not the sub-tenant or licensee of the husband. It is his duty to provide a roof over her head and he is not entitled to tell her to go without seeing that she has a proper place to which to go."

This, in my opinion, is the crux of the appeal. A wife is clearly entitled to protection in the matrimonial home but how can it be argued that a partner, agent or licensee of an absent statutory tenant of business premises is in the same "very special position"? Denning L.J. indeed expressly differentiates between a wife and a licensee and I cannot see how the situation is altered because the defendant is Abdul Majid's partner — merely in name. Partnership involves a degree of mutual trust and it is quite apparent that none whatsoever existed between the defendant and his partner who had defaulted and absconded. *Brown v. Draper*[1], in my opinion, quite apart from having "very little bearing" cannot possibly be stretched to cover the circumstances of this case and the defendant cannot be deemed to have held over as Abdul Majid's partner, agent or licensee. It follows that no statutory tenancy was created in February 1955.

I would allow the appeal and award the appellants the declaration and injunction they sought in prayers 1 and 2 of the Statement of Claim with costs here and below.

Whitton J. : — I have had the advantage of reading the judgments of the President of the Court and my brother Knight.

In considering this appeal I think it can at least be said with some confidence that if the respondent is entitled to retain possession it can only be on the strength of some right subsisting in Abdul Majid and relative to which he is Abdul Majid's agent or licensee. At first sight it might seem as if the respondent's position as partner in the firm from 1950 up to the present time invested in him some rights of possession against the lessor, merely on the strength of being a partner, but it appears clear that a lease to a firm is a lease to the partners at the date of the grant (*vide Wray v. Wray*[4] and *In re Smith*[5]), and there has certainly been no finding in the present case that the respondent acquired any interest in this manner.

The contention that a right still subsists in Abdul Majid depends upon the fact that the respondent held over in February 1955 after notice to quit, a fact which in the circumstances, it has been argued, rendered Abdul Majid a statutory tenant. There are, it is suggested, two sets of circumstances which either separately or in combination contribute to bring about this result: firstly that the respondent was Abdul Majid's agent or licensee; secondly that Abdul Majid had on his departure for India in June 1954 left certain furniture and stock-in-trade on the premises.

The learned Chief Justice held in this connection that the mere fact Abdul Majid was physically absent from the premises at the expiration of the tenancy did not prevent a statutory tenancy coming into existence on 28th February 1955. This finding was based on

Brown v. Draper[1] in which a husband vacated his house owing to differences with his wife, but left behind his furniture and his wife continued to stay in the house. Lord Greene held that possession by the husband's licensee or by his leaving his furniture in the house was sufficient to constitute possession on his part for the purposes of the protection of the Rent Restriction Acts. In the course of his judgment the following passage appears :—

"The protection of the Acts, in our opinion, extends to protect a licensee of the tenant, not because the licensee can claim the protection of the Acts in his or her own right, but because the tenant is a necessary party to the proceedings, and no order can be made against his licensee in his absence."

As was pointed out, however, by Lord Porter in *Hardial Singh & Ors. v. Malayan Theatres Ltd.*[2] English cases have little bearing on cases brought under the Singapore Control of Rent Ordinance owing to the differences between the Ordinance and the English Rent Acts. Before then *Brown v. Draper*[1] can be regarded as a persuasive authority for the present case it is necessary to be satisfied that the principle it enunciated is applicable to the circumstances with which we are dealing. That principle is, putting the matter broadly, the only way a tenant can be deprived of the protection of the Rent Restriction Acts is either by going out of possession or by having an order for recovery of possession made against him; and in relation to this proposition it was laid down that the fact of having a licensee on the premises or the leaving of furniture in them amounted to possession in the personal absence of the tenant. I do not think the language in *Brown v. Draper*[1] implies that this principle is confined to cases where the person left behind in the house is a wife, though the judgment of Denning L.J.in the later case of *Old Gate Estates Ltd. v. Alexander*[3] perhaps suggests a somewhat different view of the matter. In this connection it cannot be disputed that the circumstances which prevail in the case of a private dwelling-place are different from those where business premises are concerned. After careful consideration, however, I am of the opinion that once protection under Rent Control legislation is given to the tenants of business premises, as in Singapore, the reasoning applied in *Brown v. Draper*[1] is equally apposite to the tenant of a shop as to the tenant of a private house. I would add, however, that I do not consider *Brown v. Draper*[1] so far as the leaving of furniture is concerned can be regarded as authority for a case with circumstances so different as ours.

There remains, however, the question whether the respondent is the licensee of Abdul Majid. In my view the appellants are entitled to rely upon the admissions of the respondent to the effect that Abdul Majid had absconded to India in June 1953 owing the partnership over $30,000 as well as other debts in Singapore. In these circumstances it seems plain a strong, if not the main, motive for his departure was to avoid his liabilities, and consequently it was clearly against the interests of the respondent as a member of the partnership. I think that in such a situation, even if the partnership still exists, the respondent can scarcely be regarded as Abdul Majid's agent for the purposes of the tenancy. Again it seems to me that for a person to become a licensee of premises like these there must be evidence of at least an implied grant of a licence on the part of the person alleged to have given it, or if such a licence was already in existence by virtue of the partnership that there was at least an implied licence to remain after the person originally giving it had suddenly vacated the premises. Putting the matter in other language I think that a man who claims rights of tenancy through one who has by any ordinary criterion abandoned his tenancy must establish positively that he himself holds or retains authority from the departed tenant which legally entitles him to retain possession. In the present case as I see the matter Abdul Majid was only concerned with getting away from Singapore and took no action to preserve either his own tenancy rights or to confer upon the respondent any right of occupation after his departure. In the light of these considerations I have reached the conclusion the respondent is not Abdul Majid's licensee, and, therefore, he cannot be correctly said to have held over as Abdul Majid's agent.

For these reasons I would allow the appeal and award the appellants the declaration and injunction they seek in prayers 1 and 2 of their claim with costs here and below.

Appeal allowed.

Solicitors : *Drew & Napier; Tan, Rajah & Cheah.*

CHEW KHAI & ANOR. v. POH TAI CO.

[O. C. J. (Whyatt C.J.) November 16, 1956]

[Singapore — Suit No. 915 of 1956]

Landlord and Tenant — Claim for possession on ground that demolition of building is necessary in the interests of town improvement — Control of Rent Ordinance (Cap. 242), s. 15(1)(k).

In this case the plaintiffs claimed possession of certain shop premises at New Bridge Road, of which they were landlords and the defendants were the tenants. The premises were originally held on a 99-year lease which had expired and the plaintiffs had entered into an agreement with the Government for a 99-year building lease. The plaintiffs called evidence to show that the demolition of the building was necessary to comply with a plea for the re-development of the area drawn up by the Singapore Improvement Trust.